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3 August 1971

MEMORANDUM FOR : Director, Central Reference Service

SUBJECT : Hebert/Arends Bill to Establish a Commission
on Information Protection and the National
Security--H. R. 9853

1. My reaction to this proposed legislation is that CRS would have little grounds for comment. The bill was rushed together and introduced by the Chairman and ranking minority member of the House Armed Services Committee to give that Committee jurisdiction over the subject matter. Therefore, the Commission's proposed jurisdiction on protection of classified information is limited to the Department of Defense agencies and CIA which come within the purview of the Armed Services Committee. Obviously, for the Commission's work to be effective in the national security field, it would have to include classification policies of the Department of State, the FBI and perhaps even the NSC and White House staff. Jurisdiction over such matters in the Congress would lie between the Foreign Affairs, Judiciary, and perhaps Government Operations Committees. In the House, the problem is already being considered to some extent by the Government Operations Committee. Thus, before any legislation of this type is passed, it may become involved in a first class jurisdictional imbroglio.

2. The purposes of the establishment of this Commission are set forth in Section 502 (p. 2) of H. R. 9853. It is interesting to note that the Commission is to "study and review" all matters with regard to classification and protection of "information affecting the national security," as well as the status and adequacy and effectiveness of applicable laws and regulations together with policies and procedures.

3. It is also interesting that four of the Commission members are to be appointed by the Congress, four by the President, and four by the Chief Justice of the United States. While there have been many commissions in the past whose membership has embraced both executive and legislative appointees (the Hoover Commissions and the Warren Commission for example), I do not happen to recall any which embraced appointments by all three components of the government; the appointment of four members of this Commission by the Chief Justice might raise some questions regarding the separation of powers in view of the fact that some Commission actions or proposals might require judicial review. This situation appears to me slightly different than such examples as Chief Justice Warren's chairmanship of the Warren Commission and Mr. Justice Roberts' chairmanship of a panel

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to investigate the Pearl Harbor disaster immediately after its occurrence. In the latter two cases, the appointments were made by the President and not by the Chief Justice.

4. It is noted that the Commission shall meet at least once during each calendar year or at the call of the chairman or a majority of its members and that it shall have a permanent staff as well as being empowered to hire experts and consultants and coopt employees of other agencies of government on a reimbursable basis. Thus, there may rapidly develop a situation where the staff is into everything with little apparent Commission control. Experience indicates that these things tend to grow rather than to reduce. Obviously virtually all of the staff members will need full clearances, including the esoteric ones. In addition, Section 505(c) has the usual proviso regarding the Commission's right to secure information from any department or agency of the government as well as subpoena powers (Section 505(e)).

5. It is noted that the first annual report of the Commission shall include recommendations as to procedures to be taken within the Executive Branch to protect the secrecy of information affecting the national security as well as procedures to be followed by the courts in judicial hearings involving such information. It is possible that such recommended procedures might be in derogation or run counter to the DCI statutory authority to protect intelligence sources and methods and thus would have to be watched.

6. In short, this legislation is loosely drawn and, as noted above, has been rushed in to preempt the field. Frankly, I do not think such a Commission is needed; the President is perfectly able to revise most of the necessary procedures by Executive Order and he can propose any legislation that might be required. I cannot believe that the Commission will affect CIA much one way or the other other than by creating a staff which will require knowledge of highly compartmented intelligence clearances and perhaps make them public. This would be a dandy fight for CIA to stay out of, and I hope that the DCI's comments on the legislation will be very limited.


Walter Pforzheimer
Curator
Historical Intelligence Collection

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| Remarks: <p>I don't feel any particular competence to comment on the Hebert/Arends Bill but I asked Walter Pforzheimer to look it over. His ideas are attached for whatever use they may be, if any.</p> | | | |
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